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**REMARKS**

Claims 1, 2, and 4-14 were pending in the present Application. Claims 8 and 10 have been amended and Claim 4 has been cancelled, leaving Claims 1, 2 and 5-14 for consideration upon entry of the present Amendment. No new matter has been introduced by these amendments. Specifically, a feature has been removed from Claim 8 and incorporated into Claim 10. Support for this amendment can be found at least in Claims 8 and 10 as originally filed. In addition, support for the amendment to Claim 8 regarding openings in a top and bottom surface of the piston assembly can be found at least in Figure 1 as originally filed.

Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 8 and 11-13 stand rejected under 35 U.S.C. § 102(e), as allegedly anticipated by U.S. Patent Application Publication No. 2004/0173422 to Deshmukh *et al.* (hereinafter "Deshmukh"). Applicants respectfully traverse this rejection.

Currently amended independent Claim 8 is directed to a magnetorheological damper comprising a cylindrically shaped housing; a magnetorheological fluid disposed in the cylindrically shaped housing; a piston assembly disposed within the cylindrically shaped housing in sliding engagement with the cylindrically shaped housing defining a first chamber and a second chamber, wherein the piston assembly comprises an open cell porous media comprising a plurality of fluid passageways in fluid communication with a plurality of openings in a top surface and in a bottom surface of the piston assembly, and at least one electromagnet centrally disposed in the piston assembly; and a power supply in electrical communication with the at least one electromagnet.

Deshmukh is generally directed to impact absorbers using an energy-absorbing fluid impregnated material consisting of a porous network of solid material.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Bariant Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Notably absent from

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Deshmukh is "a piston assembly disposed within the cylindrically shaped housing in sliding engagement with the cylindrically shaped housing defining a first chamber and a second chamber, wherein the piston assembly comprises an open cell porous media comprising a plurality of fluid passageways in fluid communication with a plurality of openings in a top surface and in a bottom surface of the piston assembly". The Examiner's attention is respectfully directed to Figures 7-10, and the relevant portions of the Specification related to these Figures, which illustrate and describe the various dampers disclosed by Deshmukh.

Immediately, it is apparent that with respect to the dampers disclosed in Figures 8 and 9, the piston assembly appears to be separate from the open cell porous media. Therefore, these dampers fail to even disclose a piston assembly comprising an open cell porous media.

While the piston assemblies of Figures 7 and 10 appear to be attached to, and therefore comprise, an open cell porous media comprising a plurality of fluid passageways, these dampers fail to show the *plurality of fluid passageways in fluid communication with a plurality of openings in a top surface and in a bottom surface of the piston assembly*.

Specifically, Figure 7 fails to show fluid communication between the plurality of fluid passageways in the open cell porous media and anything else. As described in paragraph [0032] of Deshmukh's Specification, piston is connected to a pushrod that compresses the fluid filled cellular or fibrous matrix during impact. There is no fluid movement according to Deshmukh.

Figure 10 illustrates the plurality of fluid passageways of the open cell porous media in fluid communication with *a single opening on the side of the piston assembly*, not a plurality of openings in a top surface of the piston assembly. This is described in paragraph [0035] of Deshmukh, which are reproduced for the Examiner's convenience as shown below.

[0035] FIG. 10 shows still another embodiment in which the cylinder 1001 houses stacked layers, each layer consisting of a magnetizing coil 1005 and a cellular or fibrous solid block 1006 impregnated with an MR fluid. An additional magnetizing coil 1007 is housed in the piston 1009. **As in the arrangement of FIG. 9, MR fluid, if it is, expelled from the impregnated blocks 1006 flows in the gap between the inner walls of cylinder 1001 and the smaller piston 1009.**

(Deshmukh, page 4, paragraphs [0033] through [0035], emphasis added)

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Therefore, Deshmukh clearly fails to disclose each and every element of Applicants' claims. Accordingly, Applicants respectfully request withdrawal of the rejection to Claims 8 and 11-13.

Claim Rejections Under 35 U.S.C. § 103(a)

Claim 14 stands rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Deshmukh in view of U.S. Patent 6,279,701 to Namuduri *et al.* (hereinafter "Namuduri"). Applicants respectfully traverse this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Claim 14 depends from, and ultimately includes all elements of, its base claim (i.e., Claim 8). For the reasons discussed above, the primary reference, Deshmukh, fails to disclose (or even suggest) all elements of currently amended, independent Claim 8. Namuduri fails to compensate for the deficiencies of Deshmukh.

Because the combination of references fails to teach or suggest Applicants' claimed magnetorheological damper, withdrawal of the rejection is respectfully requested.


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It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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